

Draft
response
for Sec.
Pirner's
signature

495 Gillette Prairie Rd
Hill City, SD 57745
April 17, 2013

DENR Secretary Pirner
523 East Capitol
Pierre, SD 57501

Dear Secretary Pirner:

I write to convey my concern about the prudent use of taxpayer dollars. More specifically, I am concerned about the taxpayer dollars being expended in an attempt to make the thirty (30) something miles of Spring Creek, between its headwaters and its entrance to Sheridan Lake, *safe* for immersion recreation [swimming]. Yes, swimming! Unbelievable!

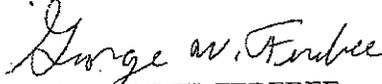
First, in the way of identification, I am a seventy-three (73) year old semi-retired cattle rancher who spent my prime adult years fighting the cold war as an officer in the United States Air Force (USAF). I earned an engineering degree prior to my enlistment (draft induced) in the USAF and earned an MBA during my tour as a Minuteman Missile Combat Crew Commander. I am a hard core Reaganite. Wonder how many people are having second thoughts about criticizing (ridiculing) his plans to build a missile defense.

Secretary Pirner, please allow me to be frank and to the point, if the EPA 319 program is intended to be a modern day version, albeit limited, of the Roosevelt era WPA or CCC programs, just come right out and say so. Would such a declaration console those of us who subscribe to a government of frugality and beneficial outcomes? No, however, we would redirect our concerns.

On the other hand, if the EPA 319 program is intended to fund endeavors having clearly beneficial and achievable goals, please accommodate those of us with concerns about TMDL projects in our neighborhood, i.e., Spring Creek and Battle Creek. We stand ready to engage in a meaningful, fact based dialogue. As I mentioned to Chief of Staff Johnson yesterday, a Region 8 EPA staffer informed me that the individual states have considerable discretion.

Looking forward to discussing the discretion ostensibly at your disposal as taxpayer dollars, more appropriately borrowed dollars, find their way into pockets of others, absent benefit of the resource allocation powers inherent in the free enterprise system. Certainly, if the EPA staffer was overly generous in describing your discretion concerning 319 funds, that issue should be aired as well.

Nature abhors disequilibrium,


GEORGE W. FEREBEE

cc: Chief of Staff Johnson



CORPORATE OFFICE:
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West Sacramento, California 95691
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May 20, 2013

Mr. George Ferebee
11495 Gillette Prairie Rd.
Hill City, SD 57745

Dear Mr. Ferebee:

I am in receipt of your letters, and I have been involved in discussions with my staff to ensure you are afforded your rights to examine records of West Dakota Water Development District (WDWDD). Since my understanding of the Freedom of Information Act requests is limited to the practices at the federal level, I suggested to Denise that she try to familiarize herself with the state requirements. We do not want to impede your rights, however we also do not intend to give you carte blanche access to the files of WDWDD and the potentially confidential information contained therein. We are quite confident the law does not require such.

We have advised the district to retain an attorney to advise them and us on your rights and the district's obligations. It is also my understanding the Board Chair has agreed to visit the office with you so you might look at the records you request.

We do believe you should submit your request to view records in writing and be clear about the specific documents you are interested in reviewing so we can have those records available when you come to the office. If you provide me with a legal citation absolving you from providing the request in writing we would be happy to review same with the district's attorney.

Sincerely,



Stanley Keasling

cc: West Dakota Water Development District



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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denr.sd.gov

May 22, 2013

George Ferebee
11495 Gillette Prairie Road
Hill City, SD 57745

Dear Mr. Ferebee:

Thank you for your letter regarding Spring Creek. The EPA staffer who told you the state has considerable discretion in nominating 319 projects to EPA for funding is correct, but unfortunately, the state has little discretion in classifying the beneficial uses of streams and lakes. Violations of the water quality standards established to protect beneficial uses of surface waters is what drives Total Maximum Daily Load projects.

For example, you wrote it is unbelievable that Spring Creek is classified for immersion recreation. The background behind that classification comes from the 1972 Water Pollution Control Act and EPA Water Quality Standards Regulation, which mandate states establish standards "...which provide(s) for the protection and propagation of fish, shellfish, and wildlife and provide(s) for recreation in and on the water..."

Traditionally, EPA has allowed states to divide recreational uses into primary contact and secondary contact recreation. The primary contact or immersion recreation classification protects people from illness due to activities involving the potential for ingestion of, or immersion in, water. This includes situations where the water may be accidentally ingested or where certain sensitive organs such as the eyes, ears, and nose may be exposed to the water. Consequently, there is little leeway in establishing standards for secondary contact recreation. Options allowed by EPA's Water Quality Standards Handbook for designation of recreational uses statewide are:

- Option 1- Designate primary contact recreational uses for all waters of the State, and set bacteriological criteria sufficient to support primary contact recreation.
- Option 2 - Designate either primary contact recreational uses or secondary contact recreational uses for all waters of the State and, where secondary contact recreation is designated, set bacteriological criteria sufficient to support primary contact recreation. The rationale for this option is discussed in the preamble to the Water Quality Standards Regulation, which states: "... even though it may not make sense to encourage use of a stream for swimming because of the flow, depth or the velocity of the water, the States and EPA must recognize that swimming and/or wading may occur anyway. In order to protect public health, States must set criteria

to reflect recreational uses if it appears that recreation will in fact occur in the stream."

- Option 3 - Designate either primary contact recreation, secondary contact recreation (with bacteriological criteria sufficient to support primary contact recreation), or conduct use attainability analyses demonstrating that recreational uses consistent with the Clean Water Act goal is not attainable for all waters of the State. Physical factors, which are important in determining attainability of aquatic life uses, may not be used as the basis for not designating a recreational use consistent with the Clean Water Act goal. The basis for this policy is the States and EPA have an obligation to do as much as possible to protect the public health.

With about 95,130 miles of rivers and streams and 572 classified lakes and reservoirs in South Dakota, the South Dakota Water Management Board has opted to use a variation of Option 2 above to establish EPA approved recreational use classifications. However, the Department of Environment and Natural Resources (DENR) attempts to do several use attainability analyses as mentioned in Option 3 each year to establish more site-specific water quality standards. In response to your letter, DENR will add Spring Creek to the list of streams scheduled for a use attainability analysis this summer and we will send you the results when completed.

A use attainability analysis may or may not help with the Total Maximum Daily Load listing for Spring Creek. Meanwhile, the EPA 319 program is seeing cuts in its funding. In FFY 2011, South Dakota saw a \$416,100 cut in its 319 funding, another \$180,000 cut in FFY 2012, and we are expecting a \$218,000 cut in FFY 2013. This means South Dakota's 319 program may receive nearly a 26 percent cut over this four-year period. Therefore, your desire for reduced federal EPA 319 funding is occurring. In addition, the minutes from the May 15 meeting of the West Dakota Water Development District show the District has ceased funding for the Spring Creek 319 project.

It is hoped this information is useful to you. Thank you again for writing.

Sincerely,



Steven M. Pirner, PE
Secretary

cc: Dustin Johnson, Chief of Staff
Matt Konenkamp, Senior Policy Advisor

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MAY 30 2013

DEPT. OF ENVIRONMENT AND
NATURAL RESOURCES,
SECRETARY'S OFFICE

11495 Gillette Prairie Rd
Hill City, SD 57745
May 27, 2013

DENR Secretary Pirner
523 East Capitol
Pierre, SD 57501

Dear Secretary Pirner:

Thank you for your letter dated May 22, 2013, in response to my letter to you dated April 17, 2013. Your letter offers encouragement. Hopefully, as I asked in my letter, we can "engage in a meaningful, fact based dialogue." Even though your letter is not void of *bureaucratese* I detect a glimmer of reality and practicality.

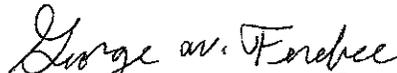
You offer: "In response to your letter, DENR will add Spring Creek to the list of streams scheduled for a use attainability analysis this summer and we will send you the results when completed." Sir, I respectfully request: (1) Add Spring Creek, above Sheridan Lake, now, (2) Immediately suspend any further expenditures of taxpayer dollars involving Spring Creek pending your "attainability analysis," and (3) Publicize your actions regarding Spring Creek. You may know that we, the taxpayers, have lined RESPEC Consulting's pockets with \$537,609.14, ostensibly in large part for *Public Outreach*. Not even two and half years of milking the taxpayers, what a bill!

As you probably know by now, RESPEC employee, Justin Krajewski, who calls himself a "Watershed Scientist," (Really) barred me from the Spring Creek Watershed Advisory Group meeting on March 27, 2013. A Pennington County Deputy Sheriff stood at the meeting room door and barred my entrance. When I pointed out to the "Watershed Scientist," that I considered his act to be unconstitutionally discriminatory to me he kicked the public out, including the Hill City Prevalier News reporter. So much for *Public Outreach*.

Near as I can tell, none of the BMPs implemented so far have done one lick to meet the requirement set forth by DENR's Aaron Larson in his letter to the Pennington County Planning Director: "To address the impairment of the immersion recreation use of Spring Creek due to elevated fecal coliform bacteria concentrations." As an aside, Secretary Pirner, to this day I remain in awe as to how a government employee deep in the bowels of your organization, probably bottom rung, can fire off a letter of such ostensible gravity. Certainly fired up a commissioner or two.

Finally, for now, thanks for bringing up the West Dakota Water Development District. I will address my concerns by separate letter. Thank you. Stop the Spring Creek waste, now.

Nature abhors disequilibrium,


GEORGE W. FEREBEE

cc: Chief of Staff Johnson

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MAY 30 2013

DEPT. OF ENVIRONMENT AND
NATURAL RESOURCES,
SECRETARY'S OFFICE

11495 Gillette Prairie Rd
Hill City, SD 57745
May 27, 2013

DENR Secretary Pirner
523 East Capitol
Pierre, SD 57501

Dear Secretary Pirner:

Thanks for your letter of May 22, 2013. The last sentence of your next to last paragraph states: "In addition, the minutes from the May 15 meeting of the West Dakota Water Development District [WDWDD] show the District has ceased funding for the Spring Creek 319 project."

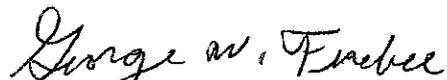
Sir, I am puzzled. I checked and double checked my April 17, 2013, letter to you and by golly either I am missing what you apparently picked up on or you merely, for whatever reason, tossed WDWDD into the discussion. In any event, thank you for starting the WDWDD discussion. Reason: I am having difficulty with WDWDD's new administrator, RCAC (I don't know what the initials stand for).

My interpretation of SDCL 1-27-42 is that you as Secretary of DENR are the "Public record officer" for WDWDD. If not, please tell me who is. If so, consider this my "written request," as provided by SDCL 1-27-37. I want to examine WDWDD's financial records.

For your edification I am attaching RCAC CEO Keasling's May 20, 2013, letter to me. Seems to me that Denise, RCAC's WDWDD administrator needs to do more than "familiarize herself with state requirements." She needs to comply with state law.

Thank you in advance.

Nature abhors disequilibrium,


GEORGE W. FEREBEE

Atch: RCAC CEO letter dated May 20, 2013



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

June 21, 2013

George Ferebee
11495 Gillette Prairie Road
Hill City, SD 57745

Dear Mr. Ferebee:

Thank you for your letters dated May 27. First, with respect to Spring Creek, DENR previously responded to you by agreeing to add it to our list of streams for a use attainability analysis. However, we will not suspend expenditures as a contractual agreement is still in place. Finally, news about the Spring Creek Watershed Project can be obtained from its website at: www.springcreekblackhills.com.

Second, your interpretation that the Secretary of DENR is the public record officer for the West Dakota Water Development District is wrong. West Dakota is a special district, which makes the record officer the chairperson of the board as highlighted below.

SDCL 1-27-42. Public record officer for the state, county, municipality, township, school district, special district, or other entity. The public record officer for the state is the secretary, constitutional officer, elected official, or commissioner of the department, office, or other division to which a request is directed. The public record officer for a county is the county auditor or the custodian of the record for law enforcement records. The public record officer for a first or second class municipality is the finance officer or the clerk or the custodian of the record for law enforcement records. The public record officer for a third class municipality is the president of the board of trustees or the custodian of the record for law enforcement records. The public record officer for an organized township is the township clerk. The public record officer for a school district is the district superintendent or CEO. The public record officer for a special district is the chairperson of the board of directors. The public record officer for any other entity not otherwise designated is the person who acts in the capacity of the chief financial officer or individual as designated by the entity.

Thank you again for your letters.

Sincerely,

Steven M. Pirner, PE
Secretary

cc: Dustin Johnson, Governor's Office

11495 Gillette Prairie Rd
Hill City, SD 57745
June 25, 2013

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DENR Secretary Pirner
523 East Capitol
Pierre, SD 57501

JUN 27 2013

DEPT. OF ENVIRONMENT AND
NATURAL RESOURCES,
SECRETARY'S OFFICE

RE: Public records officer

Dear Secretary Pirner:

Thanks so very much for your letter of June 21, 2013. Obviously, you have researched the "public records" statutes, and your letter included SDCL 1-27-42. Missing from your letter, however, was your "source" for determining that West Dakota is a *special district*. No doubt you have the "source" at your fingertips and would be happy to share with me. Would you please provide me the statute(s) or other authoritative source for your determination?

Your letter, also, briefly addressed "use attainability analysis." Certainly appreciate your thoughts. I will respond more fully in another letter. For now, thanks for mentioning "contractual" matters. Oversight is sorely lacking!

Your letter stated: "Finally, news about the Spring Creek Watershed Project can be obtained from its website at:" Sir, I am still trying to grasp the reasoning for that inclusion in your letter. My initial thoughts are not favorable. Pravda rattles around in my mind!

Nature abhors disequilibrium,


GEORGE W. FEREBEE

cc: Chief of Staff Dusty Johnson



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July 3, 2013

George Ferebee
11495 Gillette Prairie Road
Hill City, SD 57745

Dear Mr. Ferebee:

Thank you for writing again. This is in response to your June 25 letter requesting the source for determining that the West Dakota Water Development District is a special district. Two code sections are provided below outlining the establishment of West Dakota and the designation of water development district as political subdivisions of the state. Political subdivisions that are neither municipalities, counties, organized townships nor school districts are considered special districts. This would include but is not limited to water development districts, irrigation districts, sanitary districts, water user districts, water project districts and watershed districts.

46A-3A-1. Establishment of districts--Procedure--Political subdivision status. In order to attain the objectives and intent of chapters 46A-3A to 46A-3E, inclusive, and chapter 46A-2, the Legislature may establish water development districts. A water development district may be established by an act of the Legislature, signed by the Governor, describing the exact boundaries of the area to be included within the proposed water development district and assigning it an appropriate name. A water development district may also be established pursuant to the procedure set forth in §§ 46A-3A-8 to 46A-3A-15, inclusive. A water development district is a political subdivision of the state. A water development district shall exist as a legal entity beginning on January first immediately following the effective date of an act establishing it as a water development district.

46A-3A-6. West Dakota district. The West Dakota Water Development District is hereby established. The West Dakota Water Development District includes that portion of Pennington County west of the Cheyenne River.

Sincerely,

Steven M. Pirner, PE
Secretary

cc: Dusty Johnson, Governor's office

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JUL 12 2013

DEPT. OF ENVIRONMENT AND
NATURAL RESOURCES,
SECRETARY'S OFFICE

11495 Gillette Prairie Rd
Hill City, SD 57745
July 7, 2013

DENR Secretary Pirner
523 East Capitol
Pierre, SD 57501

RE: Rule of Law

Dear Secretary Pirner:

Thank you for responding again. Unfortunately, it seems to me that we are losing ground. I initially inquired (May 27th letter) about "public record officer" for South Dakota Water Development Districts.

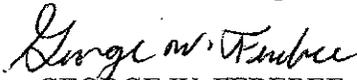
You asserted in your June 21st letter that I was wrong about my interpretation of SDCL 1-27-42 and instead set forth the notion that, "West Dakota is a special district." Thereby, in accordance with SDCL 1-27-42, the chairperson of West Dakota would be the "public record officer."

Since you did not provide an authoritative "source" for your assertion that West Dakota is a *special district*, I wrote to you again on June 25th requesting that "source." Regrettably, your response, July 3rd, contained another unsupported (naked) assertion, "Political subdivisions that are neither municipalities, counties, organized townships nor school districts are considered special districts." Further, in your response you highlighted a passage from SDCL 46A-3A-1, "A water development district is a political subdivision of the state." So?

Sir, would you please provide the authoritative "source" for your assertion that West Dakota is a *special district*? Looking forward to putting the issue of "public record officer" to rest so that we the citizens can move forward with our right to know (open government).

Mr. Secretary, in view of the recent press release by the Pennington County Emergency Management Director asserting potential danger to one's health by the water in a stretch of Spring Creek, I highly encourage your reconsideration of the urgency of a "use attainability analysis." Please thoroughly analyze the entirety of Spring Creek and its tributaries above Sheridan Lake for "use," practical and/or feasible "use" that is. Immersion recreation does not appear to be practical or feasible. Cold and shallow. Some stretches, especially of tributaries, are already bone dry.

Nature abhors disequilibrium,


GEORGE W. FEREBEE

cc: Chief of Staff Johnson



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

July 23, 2013

George Ferebee
11495 Gillette Prairie Rd
Hill City, SD 57745

Dear Mr. Ferebee:

Secretary Pirner asked me to respond to your July 7th letter. You requested an authoritative source for determining that the West Dakota Water Development District is a special district. However, the Legislature has not been consistent with the nomenclature in SDCL chapter 1-27; it used political subdivisions, tax-supported districts, and special districts in various statutes in the chapter, with no specific definitions.

The opinion of our legal counsel remains that West Dakota is a special district. Furthermore, counsel finds no interpretation that the Secretary of DENR is the public record officer for the state's water development districts. I trust your legal counsel will agree with these interpretations of the relevant statutes.

Sincerely,

A handwritten signature in black ink that reads 'James Feeney'.

James Feeney, Director
Division of Financial and Technical Assistance

cc: Dusty Johnson, Governor's office